UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,090	11/16/2001	Stephen P. Vossler	P1758US00	4805

7590   06/21/2007

GATEWAY, INC.
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EXAMINER
LESNIEWSKI, VICTOR D

ART UNIT	PAPER NUMBER
2152	

MAIL DATE	DELIVERY MODE
06/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	09/991,090	VOSSLER, STEPHEN P.
	Examiner	Art Unit	
	Victor Lesniewski	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 April 2007*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,4,7,9,11,13,15,16 and 18-21* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,4,7,9,11,13,15,16 and 18-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1.   The amendment filed 4/17/2007 has been placed of record in the file.

2.   Claims 11 and 20 have been amended.

3.   The objection to claim 20 is withdrawn in view of the amendment.

4.   Claims 1, 3, 4, 7, 9, 11, 13, 15, 16, and 18-21 are now pending.

5.   The applicant's arguments with respect to claims 1, 3, 4, 7, 9, 11, 13, 15, 16, and 18-21

have been fully considered but they are not persuasive. A detailed discussion is set forth below.

Response to Amendment

6.   Claims 11 and 20 have been amended to correct minor errors in the claims. The

amendments do not prove a change in scope to the limitations of claims 11 and 20.

Claim Rejections - 35 USC § 103

7.   Claims 1, 3, 4, 9, and 11 remain rejected under 35 U.S.C. 103(a) as being unpatentable

over Jiang (U.S. Patent Number 6,898,432) in view of Van Leeuwen et al. (U.S. Patent Number

6,597,906), hereinafter referred to as Van Leeuwen, as presented in the previous rejection dated

1/31/2007.

8.   Claims 7, 13, and 18-21 remain rejected under 35 U.S.C. 103(a) as being unpatentable

over Jiang in view of Van Leeuwen further in view of Pyhalammi et al. (U.S. Patent Number

6,996,393), hereinafter referred to as Pyhalammi, as presented in the previous rejection dated

1/31/2007.

9.   Claims 15 and 16 remain rejected under 35 U.S.C. 103(a) as being unpatentable over

Jiang in view of Van Leeuwen in view of Pyhalammi further in view of Lightner et al. (U.S.

Patent Number 6,636,790), hereinafter referred to as Lightner, as presented in the previous

rejection dated 1/31/2007.

Response to Arguments

10.   In the remarks, the applicant has argued:

- <Argument 1>

    The combination of Jiang and Van Leeuwen does not disclose the features of claim 1

    because it does not disclose "means for determining whether a remaining time period

    exists subsequent to said transferring means completing the information transfer within

    the time period and, if a remaining time period exists, said transferring means executing

    an additional information transfer that can be completed within the remaining time

    period" as recited in claim 1.

- <Argument 2>

    The combination of Jiang and Van Leeuwen does not disclose the features of claim 1

    because it does not disclose "predicting means predicting the time period based on both

    of the following: data rate and file priority" as recited in claim 1.

- <Argument 3>

    The combination of Jiang, Van Leeuwen, and Pyhalammi does not disclose the features

    of claims 7, 13, and 21 because it does not disclose the "user preference" or "personal

    profile" features as recited in these claims.

11.   In response to argument 1, the combination of Jiang and Van Leeuwen does disclose a

determining means and executing an additional information transfer as recited in claim 1. The

previous line citation to Van Leeuwen, column 4, lines 40-43, shows the use of Van Leeuwen's

system to schedule information transfers so that they are completed within a remaining period of

time (i.e. before entering a dead zone). The previous line citation to Van Leeuwen, column 17,

lines 20-49, describes this even further by setting out details such as calculating a remaining

amount of time before the mobile unit enters a dead zone and comparing this with the amount of

time required to complete an information transfer. As the applicant admits in the remarks, Van

Leeuwen teaches that "An estimated time before the mobile unit enters a dead zone is then

communicated to that unit" and "The mobile unit uses this information to determine whether

sufficient time remains before entering the dead zone to transfer one or more blocks of data."

12.   Concerning the applicant's argument that the combination is a product of hindsight, it

must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction

based upon hindsight reasoning. But so long as it takes into account only knowledge which was

within the level of ordinary skill at the time the claimed invention was made, and does not

include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

13.   In response to argument 2, the combination of Jiang and Van Leeuwen does disclose

predicting the time period as recited in claim 1. The previous line citation to Van Leeuwen,

column 7, lines 48-57, shows that the system includes priority procedures which take into

account both bandwidth used in information transfer and urgency of the transmission, in addition

to the time remaining. It is maintained that this meets the limitation at hand.

14.   In response to argument 3, the combination of Jiang, Van Leeuwen, and Pyhalammi does

disclose the user preference and personal profile features as recited in claims 7, 13, and 21. The

previous line citation to Pyhalammi, column 1, lines 52-67, shows the ability in Pyhalammi's

system for the user to select certain features of the information transfer, meaning the user has a

preference as to how and when information is transferred. User profiles are also maintained.

The other previous line citations to Pyhalammi discuss in more detail the use of user profiles to

provide content to the users at the most appropriate times and in the most appropriate ways.

Concerning "one of the at least two users relative to another one of the at least two users," Van

Leeuwen teaches granting priority to one user over other users based on various transmission

factors. See the previous line citations in the rejection of record.

15.   In addition, the applicant has argued that claims rejected under 35 U.S.C. 103, but not

explicitly discussed, are allowable based on the above arguments. Thus, claims disclosing

similar limitations to the discussed claims and related dependent claims remain rejected under

the same reasoning as presented above.

                                          Conclusion

16.   **THIS ACTION IS MADE FINAL.** The applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

        A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing
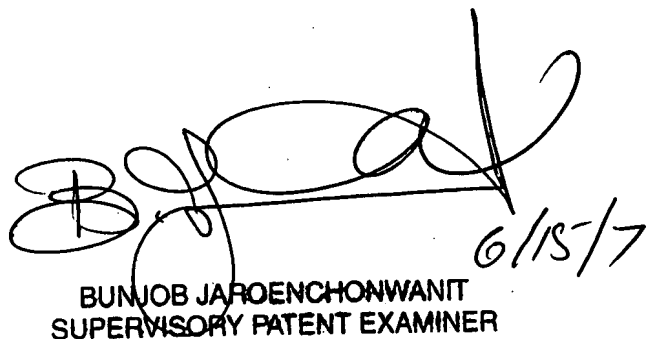
date of this final action.

17. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Victor Lesniewski whose telephone number is 571-272-3987.

The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor Lesniewski
Patent Examiner
Group Art Unit 2152

BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER

6/15/7